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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 21 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTÍNEZ

later: Mrs. KSENTINI

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Consideration of draft resolutions and decisions (continued)

Review of further developments in fields with which the Sub-Commission has been concerned (continued)

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GE.92-13550/4826B (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Elimination of Racial Discrimination (agenda item 5) (continued)

(a) Measures to combat racism and racial discrimination and the role of the Sub-Commission (continued)

Draft resolution E/CN.4/Sub.2/1992/L.12

1. Draft resolution E/CN.4/Sub.2/1992/L.12 was adopted without a vote.

(b) Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist regime of South Africa (continued)

Draft resolution E/CN.4/Sub.2/1992/L.16

2. Mr. CISSE (Centre for Human Rights), speaking on financial implications, said that should the Economic and Social Council decide to approve the request contained in the draft resolution, the total cost estimate for 1993 would be US$ 26,500. That total cost estimate was based on previous expenditure patterns and was submitted to the Sub-Commission for information purposes under rule 28 of the rules of procedure. Provision for 1992 and 1993 had already been made in the programme budget for the 1992-1993 biennium.

3. Draft resolution E/CN.4/Sub.2/1992/L.16 was adopted without a vote.

International peace and security as an essential condition for the enjoyment of human rights, above all the right to life (agenda item 14) (continued)

Draft resolution E/CN.4/Sub.2/1992/L.14

4. Mrs. PALLEY asked whether Mr. Bhandare would need to visit Geneva and whether that would entail financial implications.

5. Mr. DESPOUY, explaining the thrust of the draft resolution, said that Mr. Bhandare had requested to be allowed to update his thoughts with regard to his working paper, as there had been so many changes in the intervening period. Mr. Bhandare had been aware of the resistance to having former experts as special rapporteurs and he had asked whether he could attend the session of the Sub-Commission in 1993 to share his views with it, without financial implications. That would not create a bad precedent, and the Sub-Commission should be able to adopt the draft resolution by consensus.

6. The CHAIRMAN said that there had been no request or charge to the budget and it could therefore be assumed that the draft resolution had no financial implications. It was not necessary to decide at that point on Mr. Bhandare's attendance.

7. Draft resolution E/CN.4/Sub.2/1992/L.14 was adopted without a vote.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1992/4, 5, 6, 7 and Add.1, 8, 9 and Add.1 and 10; E/CN.4/Sub.2/1992/NGO/8, 9, 10 and 18; E/CN.4/Sub.2/1991/55; E/CN.4/1990/56; E/1992/67; A/47/289)

8. Mr. TÜRK, Special Rapporteur, introducing the final report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9 and Add.1), said that in 1989 the Sub-Commission had requested him to prepare a working paper concerning the right to freedom of opinion and expression. In 1989, it had decided to entrust Mr. Joinet and himself with the preparation of a study.

9. The Special Rapporteurs had sought to develop a conceptual and logical framework for analysing the scope and content of freedom of opinion and expression. They had drawn upon the relevant international instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as on regional instruments and certain aspects of the jurisprudence of the Human Rights Committee and the European Court of Human Rights.

10. They had proceeded from the hypothesis that freedom of opinion and expression was a fundamental human right; in a conflict with a right that did not have the same status, the right to freedom of opinion and expression prevailed. On the other hand, in accordance with relevant international standards, the right to freedom of opinion and expression could be made subject to certain restrictions. There was a fundamental legal difference between the principle of the right to freedom of opinion and expression and the permissible restrictions on that principle. The principles must always be interpreted extensively, whereas the restrictions must be interpreted as narrowly as possible. In developing a legal regime governing the right to freedom of opinion and expression, legislatures and courts of law should be advised to draft a set of restrictions on restrictions so as to ensure that the scope of that basic right was not diminished.

11. The Special Rapporteurs took the view that restrictions on the right to freedom of opinion and expression should only be allowed if they met the following criteria: legitimacy, as defined in the international instruments, for example article 19 of the International Covenant on Civil and Political Rights; they must be legal, i.e. restrictions could only be adopted by a legislative body; they must be proportionate to the needs; and they must be compatible with the standards of democratic society. No clear definition existed for the latter concept, and in a period of history in which democracy was prevailing worldwide, the human rights community must make every effort to develop such standards. He drew attention in that context to the discussion in the report of the concept of democratic necessity in paragraph 69.

12. The same approach had been applied to the question of sanctions against persons who exercised their right to freedom of opinion and expression. That was a critical aspect of the issue. Certain types of sanctions should be regarded as incompatible with the standards of democratic society and, hence, with the right to freedom of opinion and expression (paras. 70 and 71).

13. In paragraph 83, the Special Rapporteurs had expressed the opinion that deprivation of liberty was a disproportionate sanction and therefore incompatible with the right to freedom of opinion and expression. Deprivation of liberty carried the inherent risk of leading to numerous violations of human rights; it should not be provided for as a penalty save in wholly exceptional cases in which there was a clear and present danger of violence.

14. Those matters required further discussion, and it would be useful to hear the opinion of members of the Sub-Commission in that regard.

15. The report also discussed such questions as the legitimacy of restrictions imposed to combat racism and the need to protect the rights of others as a basis for certain restrictions on the right to freedom of opinion and expression. By and large, the Special Rapporteurs agreed with the criteria laid down in the International Convention on the Elimination of All Forms of Racial Discrimination and in other international instruments, and a summary was included of the relevant jurisprudence of international bodies in that regard. The report reached the conclusion that restrictions on the right to freedom of opinion and expression legitimized by the requirement to combat racism were compatible with standards of democratic necessity. In all aspects of the combat against racism, the standards of democratic necessity must prevail.

16. Concerning the recommendations (E/CN.4/Sub.2/1992/9/Add.1), the Sub-Commission should consider whether further action was needed on standard-setting (para. 6 (a)). In paragraph 6 (b), the Special Rapporteurs raised the possibility of introducing a special procedure to assure the protection of professionals in the field of information. Such a procedure could take the form of the appointment of a special rapporteur or a working group of the Commission on Human Rights or, alternatively, a request to the Secretary-General to prepare periodic reports on questions concerning the protection of professionals in the field of information. The appointment of a special rapporteur would seem the most appropriate option.

17. The Special Rapporteurs hoped that the final report met expectations, and looked forward to the comments of the members of the Sub-Commission.

18. Mr. VARELA QUIRÓS, Special Rapporteur, introducing a further progress report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1992/10), said that it had not been possible to complete the report owing to the small number of replies received to the questionnaire sent out to Governments, United Nations organs and specialized agencies, the purpose of the questionnaire having been to analyse progress or set-backs in the protection of the human rights of HIV-infected people or people with AIDS. He thanked the many non-governmental organizations (NGOs) that had responded promptly to the questionnaire sent out by the Centre for Human Rights. The advisory services that should have been made available to him had been delayed for financial reasons, and he had only succeeded in holding very brief consultations in Geneva, primarily on unresolved financial and bureaucratic problems. In view of the above, he requested the Sub-Commission's authorization to submit the final report in 1993. He reminded the Sub-Commission of the need for adequate assistance if he were to complete his task.

19. Mankind was apparently not yet aware of the grave threat to its future that AIDS represented and of its adverse consequences for human rights. For that reason, he drew attention to the latest figures of the World Health Organization (WHO): as of early 1992, WHO estimated that at least 10 million to 12 million persons worldwide had become infected with HIV and that 2 million had developed AIDS, and that by the year 2000, cumulative totals of 30 million to 40 million persons would have been infected and 12 million to 18 million would have developed AIDS. AIDS crossed divisions of race, sex, age, cultural origin and educational and economic background. Although the disease was a threat to all societies, the least developed countries were bearing the brunt of the pandemic, and its effects there were more disruptive, given the high cost of treating AIDS. In some African countries, life expectancy at birth would drop 5 to 10 per cent instead of rising. AIDS affected a large part of the active population, and that had adverse consequences for the development of many countries. The deaths of thousands of young men and women would leave innumerable children without support.

20. But the picture was not entirely bleak. Despite certain cases of discrimination, the world seemed to have responded with compassion and solidarity to the victims of AIDS, particularly when it became clear that the disease was not restricted to one part of the population, but affected society as a whole, and once it was understood that prevention was the only way to combat a disease whose victims were often completely innocent women and children. In the meantime, Governments must come up with policies to prevent the disease's spread. To that end, the principle of personal and social responsibility of members of the community must be strengthened; the population must be clearly informed about how the HIV virus was transmitted, but it was also essential to avoid creating a panic or violating the human rights of persons who had the AIDS virus or were infected by it. In any event, HIV-infected persons or persons with AIDS must assume their part of the responsibility for preventing the disease from spreading.

21. The deceptive argument according to which the spread of AIDS could be halted by isolating or discriminating against certain groups of society would only be counter-productive and would create new groups of persons who were discriminated against and persecuted; the best medicine against human rights violations was tolerance.

22. The most effective strategy to combat discrimination against the victims of AIDS was by educating the population and creating the legal instruments to prevent such discrimination and to guarantee equal rights for AIDS victims. The Sub-Commission and other United Nations bodies could play an important role by stimulating an awareness in the international community for the need to take effective measures to prevent discrimination against persons infected with AIDS.

23. He expressed his appreciation to the Centre for Human Rights which, despite the inadequacy of financial resources, had given him its full support in preparing the report. He looked forward to the observations, criticism and suggestions of the members of the Sub-Commission, which would contribute to improving the report.

24. Mr. GUISSÉ drew the Sub-Commission's attention to the Pan-African Conference on Democracy and Management of the Transition in Africa held at Dakar in May 1992 and attended by political leaders from 42 African countries and eminent persons from all over the world. The Conference had highlighted a new intention to promote human rights. That was something really new in Africa. After a long period of slavery, three centuries of colonization and three decades of dictatorship and massive violations of human rights against a background of acute economic crisis, men had become convinced of the urgent need to choose democracy and respect for human rights as the only way to meet the many serious challenges facing Africa.

25. The transition from the old order to the new order obviously required a new kind of behaviour, a new vision based on dialogue and a consensus regarding democracy and the management of development. The Pan-African Conference had reaffirmed that the democratic process initiated in Africa reflected the firm will of the African peoples to move from one-party authoritarian regimes to pluralistic regimes deriving their legitimacy from free and democractic elections. The Conference had unanimously affirmed democracy was essential for development, but democracy could not survive for long in a society in which the citizen was unable to provide for his basic needs. Nevertheless, development was not a prerequisite for the building of a democractic society and culture. The leaders present at the Conference had expressed their intention of institutionalizing the event. Thanks were due to the Presidents of Nigeria and Senegal for the outstanding part that they had played in the proceedings.

26. Mrs. FORERO UCROS said that the right to a clean environment supplemented and strengthened other basic human rights. As a "third generation" human right, it had been affirmed in a number of important international documents and in several constitutions. Its basic principles included an individual and national duty to protect the environment, the protection of the environment in association with the promotion of environmentally sustainable development, and international cooperation in the protection of the regional and global environment.

27. Environmental degradation was closely associated with the human rights situation. Military technologies constituted the greatest threat to human rights and the environment, although some developments in biology, medicine and biochemistry and the automation and mechanization of production could also have harmful effects. The right to protection against the possible harmful effects of scientific and technological development included the right of access to information at the individual and collective levels and freedom to evaluate future developments in science and technology.

28. The most disadvantaged social groups were the most vulnerable as far as the violation of human rights was concerned because they did not have access to financial power or political decision-making, they had no privileges and were discriminated against in social services, they usually lived in the most polluted and high-risk areas, they lacked sufficient information and education, they were subject to harmful addictions, and their food was often contaminated. Any attempt to relate environmental protection and human rights

would be a step towards a new type of international cooperation based on a global coalition for sustainable human development conceived of in socio-environmental terms.

29. States had an obligation to provide compensation to the victims of human rights violations, taking into account the impact of the irreversible harm done to their families. Much progress in that respect had been made in the Americas, where one of the functions of the Inter-American Court of Human Rights was to see that such compensation was made.

30. Dr. MERSON (World Health Organization) said that WHO currently estimated that a cumulative total of 10 million to 12 million adults and 1 million children worldwide had been infected with the human immunodeficiency virus (HIV) since the beginning of the epidemic, including approximately 1 million persons who had been newly infected with HIV during the first six months of 1992. A little over 2 million of those adults and children had developed AIDS. Sub-Saharan Africa had over 7 million infections, North America and Latin America, including the Caribbean, over 2 million, South and South-East Asia over 1 million, Europe, including the countries comprising the former Soviet Union, over 500,000, North Africa and the Middle East about 75,000, Australasia over 30,000, and East Asia and the Pacific approximately 25,000.

31. The objectives of the global AIDS strategy recently revised and endorsed by the World Health Assembly and the Economic and Social Council were to prevent infection with HIV, to reduce the personal and social impact of HIV infections, and to mobilize and unify national and international efforts against the disease. As a truly global phenomenon, AIDS demanded a response that was no less sweeping. One of the critical ingredients of that response was respect for human rights.

32. Persons with HIV/AIDS continued to be stigmatized and discriminated against. Violations were occurring not only against civil and political rights, but also against economic, social and cultural rights. One reason might be that AIDS was a fatal disease with no treatment, causing the non-infected to be afraid. Another reason might be that one of the modes of transition was through sexual intercourse, behaviour which was private, secret, often hidden and in some societies constrained by law. A third reason might be that initially in developed countries HIV/AIDS had occurred in groups traditionally discriminated against such as gay men, sex workers, and injecting drug users.

33. Human rights were being violated by individuals, government entities and private institutions which discriminated against, and passed moral judgements on, people living with HIV/AIDS. Sometimes the mere suspicion of HIV infection led to stigmatization and discrimination. Violations of the right to privacy occurred when Governments imposed mandatory testing programmes on individuals or groups of people. In other instances government epidemiological surveillance testing programmes did not meet standards established by medical ethical practices, public health guidelines or international human rights principles. Some examples included lack of informed consent in connection with HIV testing, breach of confidentiality in the notification of HIV or AIDS, and unauthorized disclosures. Violations of the right to be free from arbitrary arrest or detention occurred when

individuals with HIV/AIDS were imprisoned, placed in solitary confinement or quarantined. Violations of the right to freedom of movement occurred when people with HIV/AIDS were excluded from entering a country. Violations of the right to seek and enjoy asylum occurred when refugees with HIV/AIDS were refused asylum or deported. Violations of the right to marry occurred when individuals with HIV/AIDS were prohibited from contracting marriage. Many of those practices were mentioned in the report of the Special Rapporteur (E/CN.4/Sub.2/1992/10), who correctly drew attention to the issue of discrimination against women and children with HIV/AIDS.

34. Discrimination against HIV-infected people could take the form of a misguided public health effort to "screen" the entire population or special groups for infection. Mandatory testing had no place in public health programmes. It was not a question of the "rights of the many" versus the "rights of the few". The protection of the uninfected majority depended upon the protection of the rights and dignity of the infected person. Counselling and education of the infected person were the keys to protecting the uninfected from AIDS. Discrimination might result in driving HIV-infected persons underground, where they would get no education, counselling or care. Promoting and protecting the human rights of persons with HIV/AIDS was to the benefit of the fight against AIDS. Therefore, pursuing the promotion of human rights deserved high priority.

35. WHO had been an active participant in the promotion of human rights in the area of AIDS, its various governing bodies having recognized the need to continue to urge Governments to respect human rights and to avoid discrimination. On 13 May 1988 the World Health Assembly had adopted resolution WHA 41.24 on the avoidance of discrimination in relation to HIV-infected people and people with AIDS, being strongly convinced that respect for the human rights and dignity of such people was vital to the success of national AIDS prevention and control programmes and of the global strategy for the prevention and control of AIDS. The World Health Assembly had urged member States to avoid discriminatory action against, or stigmatization of, such people in the provision of services, employment and travel. In the latest World Health Assembly resolution on the subject, the Assembly had recognized that there was no public health rationale for any measures that limited the rights of the individual, notably measures establishing mandatory testing. WHO's Global Programme on AIDS had undertaken several activities to promote human rights. It had raised the issue at international meetings, consultations and educational seminars and had further cooperated with international human rights organizations and had urged Governments to promote human rights for people with HIV/AIDS. It had also cooperated with non-governmental organizations and supported studies to address the issue of HIV/AIDS and human rights. For example, WHO continued to take a firm stand against discriminatory practices that might hinder the short-term travel of individuals infected with HIV or living with AIDS. Consequently, it would not sponsor, co-sponsor or financially support any international conference or meeting on AIDS in any country with HIV/AIDS-specific short-term travel restrictions. WHO had conducted training on human rights for its staff at headquarters and planned similar seminars for WHO staff in the regions. It planned consultations in areas such as prisons and testing. GPA supported WHO's health legislation unit, which produced the international tabular information on HIV/AIDS legislation and the bibliography

on ethics, human rights and HIV/AIDS. WHO was also considering the establishment of other databases dealing with HIV/AIDS and human rights instruments, protection and jurisprudence.

36. GPA had cooperated with other United Nations agencies in areas of common interest in the context of human rights, including the United Nations Centre for Human Rights, ILO, UNHCR and UNDP. WHO was also engaged in discussions with UNICEF on issues of common concern relating to women and children.

37. WHO advocated to Governments the need to promote and respect human rights in the spirit of the World Health Assembly resolutions dealing with the avoidance of discrimination and the global AIDS strategy. WHO was also working to promote a more supportive social environment for AIDS prevention through the removal of legal and other barriers. It continued to provide guidance to member States in drawing up or modifying legislation in that field. It was developing a management training course for national AIDS programme managers. The training module addressed human rights issues that emerged in the design and implementation of national programmes. WHO had also funded non-governmental organizations working on issues of human rights, women and ethics and continued to respond to inquiries from such organizations concerning human rights and HIV/AIDS.

38. In the last analysis, the AIDS pandemic would be contained only if its root causes were tackled. By that was meant not only the biological determinants, but also the civil, political, economic, social and cultural factors that fuelled the spread of HIV, which fed on ancient societal and spiritual weaknesses. Those weaknesses must be overcome. That could be achieved provided that international organizations, Governments and non-governmental organizations built up their network and strengthened their alliance at the national, regional and global levels. They must all continue to press for a policy of respect for the rights and dignity of infected individuals and of the rights of population groups commonly perceived to be prone to infection. They must all try to explain that discrimination not only violated human rights but also endangered public health.

39. Mr. NDIAYE (International Labour Office) said that ILO was particularly interested in the second progress report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms submitted by Mr. van Boven (E/CN.4/Sub.2/1992/8), especially the reference in paragraph 3 to the report submitted to the Governing Body of the International Labour Office by the Commission of Inquiry to examine the complaint regarding the observance by Romania of the Convention concerning Discrimination in respect of Employment and Occupation, 1958 (No. 111). ILO would continue to support the Special Rapporteur in any further study. Another document of interest to ILO was the report on discrimination against HIV-infected people or people with AIDS submitted by Mr. Varela Quirós (E/CN.4/Sub.2/1992/10).

40. He drew attention to the contents of the memorandum submitted by ILO itself (E/CN.4/Sub.2/1992/5). The last part of the memorandum referred to ILO's collaboration with other international organizations, and to the establishment by ILO and the Centre for Human Rights of a joint working group for consultation and collaboration in relation to technical cooperation and

human rights questions. ILO was convinced of the need for concrete and effective measures to strengthen coordination of the research and information activities of the various organs of the United Nations system in various areas, both at headquarters and in the field.

41. Document E/1992/67 explained the coordination of policies and activities of the United Nations organizations and specialized agencies in specific relation to measures to combat HIV and AIDS. ILO had continued its work in that field, with specific reference to the impact of AIDS on employment and the workplace, in close collaboration with WHO. It had also submitted a reply to the questionnaire circulated by the Special Rapporteur, had attended meetings of the inter-agency group on AIDS organized under the auspices of WHO, and had collaborated with WHO on three consultations on AIDS and the workplace. The first, in 1988, had led to the adoption of a joint WHO/ILO declaration setting forth the principle of non-discrimination and policies to be pursued in relation to HIV-infected people or people with AIDS. The second had dealt with AIDS and seamen, and the third to the problems of exposure to AIDS by medical personnel. The joint WHO/ILO declaration set forth two principles. First, HIV-infected workers in good health must be treated like any other worker. Secondly, HIV-infected persons and persons with AIDS must be treated on an equal footing with workers suffering from other illnesses. HIV-infected workers should not be liable to dismissal so long as they remained fit to work. Those whose capacity for work was diminished should be regarded as handicapped persons, and should thus be accorded positive treatment affording them equality of opportunity. AIDS screening should not be compulsory, and an employee infected with HIV should not be required to notify his employer of his condition.

42. As a follow-up to those conclusions and recommendations, ILO envisaged more specific action in two fields, in close collaboration with WHO, the Centre for Human Rights, and other relevant organizations. First, more positive action would be taken to combat discrimination in the workplace against HIV-infected persons and persons with AIDS. Secondly, ILO would contribute to exploring the devastating economic and social consequences of the epidemic on the labour market, especially among young people in the developing countries, and the concomitant increase in medical and social security costs. In association with UNDP, it intended to carry out a study in a number of developing countries on the effects of AIDS on employment and costs of social protection. It would also continue to cooperate with UNFPA in execution of projects targeted on women and other vulnerable groups. A study of collective agreements and national practice with regard to discrimination in the workplace against HIV-infected people and AIDS sufferers would be followed by a tripartite colloquy involving Governments, employers and employees, on various aspects of AIDS and the workplace. Employers and trade unions had an important role to play in the fight against AIDS. In view of the extent of the epidemic, Governments and social partners were faced with problems of principle and practice that could be resolved only through a programme of legislation carefully drafted and scrupulously applied. Several Governments and professional organizations had sought the assistance of ILO in that task. Some countries had already adopted anti-discrimination legislation, prohibiting, inter alia, screening of employees or job applicants. The Committee of Experts on the Application of Conventions and

Recommendations had specified that, although the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) did not expressly cover discrimination against HIV-infected persons and persons with AIDS, the question could be examined on the basis of that Convention.

43. Mr. CHERNICHENKO said that the second progress report submitted by Mr. van Boven (E/CN.4/Sub.2/1992/8) was almost flawless. However, it might perhaps be desirable to recommend that States should include in their legislation - for example, in the general provisions of their criminal and civil codes - some reference to those acts regarded as gross violations of human rights and fundamental freedoms, a matter which was obviously of importance when deciding on payment of compensation at national level.

44. Yet the mechanisms available at national level were perhaps less important than international pressure for securing compensation. Gross and massive violations of human rights took a number of forms. They might be committed by Governments, by individuals, by individual State agents, with or without the involvement or connivance of the Government, or by groups over whom the Government had no control. If the gross violations had been committed by or on the instructions of the Government, it was hard to see how compensation could be provided at national level while that Government was still in power.

45. In the working paper he had submitted under agenda item 6 (E/CN.4/Sub.2/1992/51), which the Sub-Commission had been unable to discuss for lack of time, he had proposed that the time had come to proclaim the general principle that such gross and large-scale violations were unquestionably an international crime, like genocide, aggression and apartheid. Perhaps a more detailed document might be prepared in time for the next session, to include provisions that might be incorporated into a future declaration, together with appropriate comments. Various non-governmental organizations had asked him whether he saw such a document as including an enumeration of acts constituting gross and large-scale violations of human rights. He was not inclined to favour such a course. Though it might be possible to include specific examples of such violations, he was reluctant to do so, since what was involved was a general principle. Specific details could more appropriately be dealt with at some subsequent stage. There was a parallel with the principle of non-use of force, a principle which, while it undoubtedly existed, was not fully spelt out in the Charter of the United Nations. It would be better to begin by enunciating a general principle, and thereafter to seek ways of rendering it more specific. He invited experts to give their views on the question.

46. Mrs. MBONU said that she wished to comment on the second progress report submitted by Mr. van Boven (E/CN.4/Sub.2/1992/8). She noted that paragraph 11 of the report referred to the call contained in document E/CN.4/1992/NGO/17, for compensation to be paid by Governments of Western colonial nations to the descendants of the victimized peoples of the Americas. She was disappointed that, whether through an oversight or because of lack of access to information, the Special Rapporteur had not seen fit to discuss the question of compensation and reparations to the descendants of the victimized peoples of the continent of Africa, in accordance with international law and with the many calls for reparations and restitution voiced by African heads of State

since 1980. The definition of victims contained in paragraph 13 of the annex to the report should be extended to include not only the families and dependants of victims, but also their descendants. She hoped that, in his final report, the Special Rapporteur would make concrete recommendations on the topical issue of compensation to the African descendants of the victims of gross violations of human rights by colonial Powers.

47. Turning to the progress report on human rights and the environment prepared by Mrs. Ksentini (E/CN.4/Sub.2/1992/7 and Add.1), she said that the scourges of deforestation, desertification and drought that were afflicting the African continent should be given prominence in the Special Rapporteur's next report. Those problems posed a direct threat to the rights to health and to decent living and working conditions, particularly in the case of persons displaced as a result of man-made environmental disasters. In many cities and rural areas of the third world, environmental exclusion was being added to the burden of social exclusion. The outcome of the United Nations Conference on Environment and Development underscored the new global awareness of and concern for environmental issues. That awareness and concern must, however, be backed by commitment if the causes of environmental problems were to be tackled. Protection and rehabilitation of the environment could not be secured without agreement on the principle of equality. As the major contributors to environmental degradation, the developed countries must combat environmental problems through recognition and implementation of proportional responsibilities and commitments. Industries should be encouraged to come up with voluntary policies to reduce output of toxic gases, while the output of global warming gases should be frozen within a set time-frame.

48. Unfettered assistance should be given to third world countries where the environment was being destroyed through ignorance or out of necessity. The temptation to tie environmental protection and rehabilitation aid to specific conditionalities must be resisted, since, as former colonial Powers, the developed countries were responsible for many of the distortions that had led to environmental degradation in the third world. There was thus an element of moral obligation on that issue.

49. Nevertheless, responsibility for the planet's degradation must be shared by all. It must be accepted that the Earth's resources had been stretched beyond reasonable limits, and a new civilization must be created, rooted in ethics, prudence, care and respect for diversity, solidarity, justice and freedom. Rescuing the environment should become the central organizing principle of civilization.

50. Mrs. Ksentini took the Chair.

51. Ms. LEE (Commission of the Churches on International Affairs of the World Council of Churches) said that her organization strongly supported the claims of the Korean Council for women drafted for sex slavery by Japan.

52. The first demand was for a thorough investigation and admission by the Government of Japan of the involvement of the Japanese military. It had only been in January 1992 that Japan had first admitted the involvement of its Government when the crucial government documents had been exposed by a

university professor. As a result, on 6 July 1992, the Japanese Government had made public a preliminary report of its investigation, thus recognizing officially its systematic involvement for the first time.

53. Unfortunately, however, the government report had entirely bypassed the evidence of witnesses, surviving victims and investigating groups and had wrongly insisted that there was no evidence of coercion in the drafting of those "comfort women". Moreover, the observer for Japan, speaking on 10 August 1992 in the Sub-Commission, had reiterated that his Government had no legal responsibility for compensation.

54. The Japanese claims that the compensation issue had already been settled by the 1965 agreement between the Republic of Korea and Japan was in error, as had been argued by the representative of International Educational Development (IED) on 7 August 1992. The World Council of Churches agreed fully with the position taken by IED that the Japanese Government's act of forcing sex slavery on Korean young women constituted a crime against humanity, a violation of freedom from slavery and a violation of the Forced Labour Convention ratified by Japan in 1932.

55. Another aspect of those grave violations of human rights was that many Korean women and girls as young as 12 years of age had also been drafted as labourers who had been forced to work for military industries. The full scale of such mobilization had never been estimated. Many of the young girls drafted for labour had subsequently been forced into sex slavery. Most of the Japanese companies involved had required the small wages of those girls to be deposited with the company in order to prevent them from escaping. Such forced savings had never been returned while the records of their savings were still kept by many of those companies. The Japanese Government had claimed that the right of individuals to claim those savings had been nullified by the 1965 Korea-Japan Agreement.

56. The World Council of Churches accordingly requested the Sub-Commission to urge the Japanese Government: to investigate thoroughly those gross violations of human rights; to submit all relevant information to the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms; to admit its legal responsibility and to pay full compensation to each of the victims and their families; and to require the Japanese companies involved to remunerate Korean women workers whose wages and savings had been retained by order of the Government.

57. Mr. SENE (Observer for Senegal) said that the recent Pan-African Conference on Democracy and Management of the Transition in Africa in Dakar had been intended to assist Africans in developing a code of conduct to help construct democracy. For the first time it had been possible to bring together parties in power and opposition parties from 42 countries; the Conference had provided an opportunity for a frank exchange of views which might perhaps have been impossible elsewhere. All parties concerned had reached agreement on a joint Declaration. The practical results had become apparent immediately.

58. The ruling and the opposition parties in Rwanda had reached agreement in Dakar to resume dialogue and had subsequently issued a joint declaration on the establishment of a transitional Government to consist of various political bodies which would work to facilitate the return of approximately 250,000 refugees. That in itself was a considerable achievement.

59. The four leading factions in Somalia had been represented in Dakar where they had agreed to the principle of receiving a United Nations peace-keeping force. Appeals had been made at the Conference by OAU to the Security Council and the Secretary-General for vigorous action to be taken to help Somalia and the result had been that approximately 500 "Blue Helmets" from the United Nations were expected in Somalia to escort the humanitarian convoys. A political solution in Somalia might follow later from the discussions in Dakar but, for the time being, priority had to be given to dealing with the threat of famine and the violence which was devastating the country.

60. The Congo had been represented at the Conference by the ruling party as well as the opposition parties. Once again there had been an opportunity for dialogue and elections had subsequently taken place. The transition had been smooth; the ruling party had lost the elections but had accepted the change peacefully.

61. Both the South African Government and opposition parties had attended the Conference and had accepted the content of the Dakar Declaration. Further pressure was being applied on all the South African political parties with a view to bringing about a speedy resumption of dialogue. There were already promising signs that the dialogue would be resumed.

62. At Dakar emphasis had been placed on the factors which were indispensable in any attempt to construct democracy, such as the rule of law and fundamental freedoms, particularly freedom of expression, assembly, association, and the attainment of economic, social and cultural rights based on development and democracy. It was also essential to define the role of the public services and particularly that of the army, with a view to circumscribing the activities of the latter as a means of consolidating the basis for democracy and putting an end to the era of military coups d'état; all involved must play by the rules for democracy enshrined in the Dakar Declaration.

63. Important stumbling-blocks in Africa had been ethnic or tribal conflicts, civil wars and social disturbances which had often been due to underdevelopment or the consequences of despotic periods of rule associated with single-party States. It was for that reason that the Dakar Conference had paid particular attention to the need for preventive steps to be taken for the avoidance of conflicts and for developing means for the peaceful settlement of disputes. His Government shared the concerns of the Secretary-General who had recently made specific proposals for preventive diplomacy as a means of preventing and resolving international disputes.

64. The African political parties represented at Dakar had all expressed the hope that the Conference would be institutionalized so that it could meet on a regular annual basis in other African countries; in particular, it was felt that a focal point should be established which could investigate all forms of

human rights violations associated with the transition to the democratic process. That process could not, however, be completed until peace and security had been assured throughout the continent of Africa. In that effort the United Nations had a considerable role to play.

65. Mr. LITTMAN (International Fellowship of Reconciliation (IFOR)) said that on 30 June 1992 an Iranian news medium had announced that 147 out of the 270 deputies of the new Majlis had signed a letter condemning the United Kingdom Parliament for having received Salman Rushdie and had declared that the death sentence (fatwa) pronounced by the Iranian authorities against Rushdie for apostasy remained in force. That position was similar to that set out by the Iranian Government in August 1989 when it had informed the Special Rapporteur on summary and arbitrary executions that his intervention in the case of Rushdie had been unwarranted as being outside his mandate and that the declaration adopted by consensus at the Eighteenth Islamic Conference of Foreign Ministers in March 1989 had proclaimed the apostasy of Salman Rushdie in unambiguous terms. While the Islamic Conference had not commented on the fatwa against Rushdie, it had declared that he was an apostate. As traditional Islamic law required that the punishment for an apostate should be death, the international community was entitled to an unequivocal clarification of the position of the Islamic Conference on the matter.

66. More recently, on 12 June 1992, the Ayatollah Hassan Sana'i had confirmed the validity of the $2 million bounty offered to a prospective killer of Rushdie while in July 1992 the Ayatollah Ahmad Jannati had declared that the time was ripe for devout Muslims to kill Rushdie.

67. The opinion expressed by the Egyptian Nobel Prize Laureate Naguib Mahfouz to the effect that the concept of killing someone because of what he wrote represented intellectual terrorism had been shared by many respected Muslim religious authorities. Some of those leaders had subsequently been murdered, including the Sunni leader of the Islamic community of Brussels and the Egyptian writer Farag Foda, assassinated in Cairo on 8 June 1992. The Italian translator of the Satanic Verses had been seriously wounded in Milan while in July 1991 the Japanese translator of Rushdie's works had been slaughtered in Tokyo.

68. Salman Rushdie had recently informed the Norwegian Pen Club that he was not seeking quiet sympathy but very noisy support as what was at stake was liberty of expression in the West. He had expressed the hope that unified international pressure would be brought to bear on the Islamic Republic of Iran and had added that removal of the fatwa should be part of the price of entering the civilized world for that country.

69. IFOR considered that a firm declaration by the Sub-Commission would undoubtedly give courage to millions of Muslims who did not accept the scandalous usurpation of their spiritual values. The Sub-Commission should adopt an explicit resolution strongly condemning the fatwa of 14 February 1989. Moreover, more fatwas were being prepared. The Religious Affairs Minister of Pakistan was reported to have declared only a

few days earlier that Benazir Bhutto was liable to the death sentence for opposing a legislative amendment that would have made it a crime punishable by death to insult the Prophet Muhammad.

70. Mrs. PALLEY drew the attention of the Sub-Commission to an Associated Press report to the effect that the Religious Affairs Minister of Pakistan had accused former Prime Minister Benazir Bhutto of betraying her Islamic faith when she had opposed a legislative amendment that would make it a crime, punishable by death, to insult the Prophet Muhammad. The Minister had added that Miss Bhutto was liable to the death sentence but that the corresponding law did not yet exist. In reply, Miss Bhutto had told a news conference that the Religious Affairs Minister had defied his faith by calling her a non-Muslim and that the accusation represented a desperate, last-ditch effort by Pakistan's beleaguered Conservative Government to save itself from disintegration by using Islam.

71. The Sub-Commission must take a very clear stand before Pakistan changed the law and before more fatwas were issued. Such a stand unfortunately had not been reflected in the report of Mr. Türk and Mr. Joinet (E/CN.4/Sub.2/1992/9). The report had mentioned sanctions against persons who expressed their opinions but had said nothing about fatwas and laws imposing the death penalty on persons for heresy.

72. She was also concerned with the problem of chemical weapons and weapons of mass destruction. The draft resolution which she had submitted to the Sub-Commission at its previous session had been postponed for consideration until the current session; she proposed to replace it by a fresh draft.

73. In December 1991 the General Assembly had adopted resolution 46/36 H on transparency in armaments and resolution 46/36 L on the illicit arms trade. Both resolutions had referred to armaments as a cause of human rights violations. The Sub-Commission should invite the Commission on Human Rights to request the General Assembly to expand the incipient United Nations arms register to cover not merely large weapons like tanks, helicopters and aircraft but also machine-guns, mines and all weapons of mass destruction which the register did not currently cover. National production should also be covered. Full information should be made available not only about international arms transactions but also on internal arms transactions and holdings. The draft resolution which she would submit to the Sub-Commission would be in line with the two General Assembly resolutions to which she had referred.

74. Mr. SACHAR said that no reference had been made in Mrs. Ksentini's paper on the environment (E/CN.4/Sub.2/1992/7 and Add.1) to the Environmental Act recently adopted by India which provided for action to be taken against those polluting the environment by chemicals or smoke. There had also been a suggestion for an environmental appeal court for the whole country.

75. Even before the adoption of a statutory law, the position in India had been that not only the concerned parties, as mentioned by Mrs. Ksentini, but also people on behalf of the public interest, could go to court on the ground that certain mines or quarries or effluents discharged by industries had polluted the water; in many cases the court had issued orders to desist.

76. Turning to document E/CN.4/Sub.2/1992/8, he said that there was no Asian convention on the right to compensation as such, but in civil law, apart from the normal law of tort, compensation could be awarded in cases of illegal detention, false arrest or death. In addition, the higher courts had, in a number of cases, ordered the payment of compensation to persons arrested or detained illegally on the grounds that the right to life had been violated. Such payments were in addition to what the plaintiff might secure from the ordinary courts. Moreover, a recent decision had ruled that the State would not be permitted to plead that such acts were the individual acts of officials and therefore that the State was not liable. The situation in law was that any act by an official was the responsibility of the State, leaving aside the fact that the State might then itself prosecute the official concerned. In contrast to the situation in the past, the State could no longer plead sovereign immunity.

77. Mr. van BOVEN, Special Rapporteur, said that he wished to thank all those who had made comments on his second progress report (E/CN.4/Sub.2/1992/8); he would study all comments and suggestions carefully and take them into account in preparing his final report.

The meeting rose at 6.05 p.m.